

# SENIOR COURTS COSTS OFFICE COSTS PRACTITIONERS GROUP

MINUTES OF MEETING HELD ON THURSDAY 9 NOVEMBER 2023

| Present |   |                    |
|---------|---|--------------------|
|         | <b>Costs Judge Rowley (in the chair) (JR)</b> | <b>SCCO</b>        |
|         | <b>Senior Costs Judge Gordon-Saker (AGS)</b>  | <b>SCCO</b>        |
|         | <b>District Judge Harper</b>                  | <b>ADJ</b>         |
|         | <b>Mr S Green (SG)</b>                        | <b>APIL</b>        |
|         | <b>Mr J Ridgway (JRi)</b>                     | <b>ACL</b>         |
|         | <b>Mr M McLeish (MM)</b>                      | <b>Bar Council</b> |
|         | <b>Mr M Hoe (MH)</b>                          | <b>FOIL</b>        |
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## 1. Apologies for absence

Apologies received from Costs Judge James (JJ), Mr A Parker (AP) , Mr D Marshall (DM) and Mr P Allen (PA).

## 2. Approval of the minutes and any matters arising

Owing to the Pandemic, the previous minutes were ancient (November 2019) and concerned a meeting that very few of this meeting's attendees had attended. The minutes were approved without amendment.

In respect of matters arising and not otherwise covered on the agenda, the meeting noted the introduction of cases being reported on The National Archive rather than BAILII. As such, the previous arrangement for criminal fee appeal decisions to be sent to the Bar Council with a view to some being published on BAILII had ceased to be required. All costs judge decisions were now being published on TNA and so are available to any appellant.

The last minutes referred to the then newly drafted proposed DBA Regulations presented at a meeting in Lincoln's Inn by Professor Rachel Mulheron and Nicholas Bacon KC. There appeared to be no further news on those regulations but the recent decision in R(PACCAR) v CAT had raised the issue of the scope of the current DBA Regulations.

JR raised the possibility of there being a new Law Society CFA or DBA in the light of PACCAR and Zuberi v LexLaw but none of the attendees was aware of any such document being drafted.

### **3. CE File**

The length of time since the last meeting was exemplified by the fact that the use of CE File at that meeting was still voluntary and only became mandatory in January 2020. It had proved to be invaluable during the lockdowns since hearings had continued remotely throughout the Pandemic.

There were inevitably some drawbacks to the system but it is largely effective and appears to be here to stay. Feedback from attendees was largely positive although both SG and MH commented that documents did not always appear to be visible to users.

JR informed the meeting that the choice of filing options was due to be improved, particularly in respect of applications.

### **4. Court of Protection**

AGS confirmed that the piloting of electronic bills for Court of Protection work had been successful and so would continue to be an option from now on. He made the point that there had been some preferential treatment of e-bills during the pilot in order to ensure that enough bills were assessed but that preferential treatment was no longer the case. The use of the second version (Version 1.2) of the e-bill was being encouraged from 4 November 2023. JRi offered to publicise the new version in the ACL Newsletter.

There was then a discussion about the ever increasing flow of COP bills. AGS informed the meeting that they had doubled in the last 10 years to around 11,000 bills each year. The SCCO was short of costs officers, with three experienced officers having retired recently. HMCTS had sought additional staff but this was difficult, not least because of budgetary restraints. The administration staff had reduced from 5 to 2 and so it was taking 10 weeks to open a file on CE File and this formed part of the 11 month turnaround of bills being experienced.

The option for an interim payment of 75% of the bill was also discussed. SG indicated that his firm's recovery on COP bills was approximately 10% above the standard interim payment figure and one way to alleviate the cashflow issues of firms would be to increase the interim payment percentage. The point was made that the percentage would have to be the same for all firms and so statistics regarding firms generally required. This might be a matter for the COP specific users group.

## **5. CJC Working Parties**

The Civil Justice Council Report from May 2023 proposed reforms to costs budgeting and Guideline Hourly Rates, amongst others. The Master of the Rolls' response was awaited, although the expectation of the meeting was that the Report's recommendations would be accepted. This would include uprating the GHR by a percentage and then being reviewed fundamentally within 5 years.

## **6. Fixed Costs**

Prior to the Pandemic, a regular item on the agenda were the fixed costs proposals for NIHL claims and clinical negligence claims. The NIHL claims have been swallowed as part of the general fixed costs reforms in Part 45 and elsewhere. A general discussion occurred as to how much "gaming" of the new regime was likely by parties.

JR then produced a note from DM regarding clinical negligence claims. Such claims would be allocated to the multi-track unless there was an early admission on liability / breach of duty. For a case to be allocated to the intermediate track, it seemed likely to DM that the admission would need to be made in the protocol response and would have to be a 'full' admission, so really only leaving quantum of loss to be determined, rather than the issue of whether the breach caused the loss. The CPRC costs sub-committee would hopefully be able to consider draft rules for sign off in December and implementation by April 2024.

Separately DHSC have a scheme for lower value (under £25k) CN cases which would apply to pre-issue settlements only. This was outlined in their response to their consultation in September. A new protocol for lower value CN cases would be required and the DHSC favoured starting point of April 2024 appeared to be ambitious.

## **7. SCCO Guide for 2023 / 2024**

The 2023 Guide had been published in July. There had been little feedback from users but it was sometimes quoted in applications etc.

There was no immediate prospect of a 2024 version, at least not early in the year. A review of the impact of the increase in Fixed Recoverable Costs might bring the next version along sooner.

## **8. Updating the costs precedents**

As part of updating the SCCO Guide, some updating of the costs precedents had taken place. These were the documents which could be found in the appendix to the Guide rather than at the end of the Practice Direction to Part 47.

One obvious omission from the costs precedents was any form of Points of Dispute for E-Bills. Some guidance, for example on recording the filtering instructions so that the extent of the challenge could be easily considered by the receiving party and court, would be useful.

JR indicated that the notion of a precedent invoice which complied with the requirements of the Solicitors Act 1974 / case law had been proposed. It was in its infancy as yet but it would hopefully reduce the number of procedural challenges brought in solicitor and client assessments.

## **9. Solicitors Act Proceedings**

The SCCO currently has hundreds of s70 Solicitors Act 1974 claims. Many originally came from the Sheffield and Manchester District Registries. Many have been issued in the SCCO since March 2021.

There are a lot of similarities in the cases being brought and they include ‘generic’ arguments which potentially apply widely. This has resulted in “test” cases and stays. The leading cases have been brought against Slater & Gordon. The case of Edwards & Others was compromised shortly before a hearing in June 2023. The case of Richardson & Others appears to be the new lead case.

## **10. Outstanding appeals from the SCCO**

- **Boodia v Richard Slade & Co (x2) (Heard July 2023)** – informed consent and consumer rights issues and whether res judicata
- **Thomson Snell & Passmore v Kenig (Heard 18 10 23)** – extent of entitlement of beneficiaries to a s71 SA assessment
- **Brealey v Shepherd & Co (To be heard 20 02 24)** – entitlement of solicitor executor to charge for executor work absent a charging clause or agreement of all beneficiaries
- **Singh & Ors v Ingram (To be heard 20 11 23)** – challenge to retrospectivity in CFA and also costs of DA proceedings
- **Blacklion Law LLP v Lyons (PTA)** - Reductions on non-statutory detailed assessment including costs of the proceedings
- **St James v Wilkin Chapman (PTA)** – was CFA a CFA Lite / limitation on recovery of costs from client limited to those in budget and / or recovered from opponent

## **11. Decisions on appeals from the SCCO (for noting)**

- **Menzies v Oakwood Solicitors (Court of Appeal)** – when deduction from damages amounts to payment of a solicitor’s bill
- **Diag Human & Stava v Volterra Fietta (Court of Appeal)** – unenforceable CFA not ‘rescued’ by severance of terms or quantum meruit
- **The Scout Association v BBK (Freedman J)** – Non party costs order refused in QOCS case where adverse order made in costs proceedings
- **Jones v Richard Slade & Co (Johnson J)** – SCCO did not have jurisdiction to set aside agreement on grounds of duress etc in DA proceedings
- **Wilkins v Serco (Heather Williams J)** – Likely allocation to track
- **TRX v Southampton FC (Stacey J)** – taking out of CFA / costs of DA proceedings
- **Edwards & Others v Slater & Gordon (Ritchie J)** – Case management in Solicitors Act proceedings re: disclosure, Part 18 requests, security for costs
- **Powerrapid Ltd v Harlow District Council (Choudhury J)** – meaning of “costs of the proceedings” in compulsory purchase order proceedings
- **Lord Chancellor v Lam and Meerbox Solicitors (Cotter J)** – whether DCS page count should be used for calculating PPE for litigators’ graduated fees.

**12. Date of next meeting** – 9 May 2024.